

Assembly Bill No. 491

CHAPTER 460

An act to amend Sections 12035 and 12071 of, and to add Section 12036 to, the Penal Code, relating to firearms.

[Approved by Governor September 23, 1997. Filed
with Secretary of State September 24, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 491, Keeley. Firearms: criminal storage.

(1) Existing law establishes the crime of criminal storage which arises when a person keeps any loaded firearm within any premises that is under his or her custody or control and he or she knows or reasonably should know that a child under 14 years of age is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby either (a) causes death or great bodily injury to himself, herself, or any other person, or (b) causes injury, other than great bodily injury, to himself, herself, or any other person, or exhibits the firearm either in a public place or as specified. A violation of (a) is criminal storage in the 1st degree, punishable as either a misdemeanor or a felony, and a violation of (b) is criminal storage in the 2nd degree, punishable as a misdemeanor.

This bill instead would apply these provisions to a child under 16 years of age. The bill would revise (b) above to apply when the child carries, rather than exhibits, the firearm to a public place or as specified. The bill also would provide that a person who keeps a pistol, revolver, or other firearm capable of being concealed upon the person within any premises that are under his or her custody or control and he or she knows or reasonably should know that a child under the age of 16 years is likely to gain access to that firearm without the permission of the child's parent or legal guardian and the child obtains access to that firearm and carries it off-premises or injures or kills a person on the premises where access to the firearm was gained, is guilty of a misdemeanor.

The bill also would require a firearms dealer to post a notice on the licensed premises of the duty imposed pursuant to the above provisions. The above provisions would not apply under specified circumstances. Because this bill would create a new crime, it would impose a state-mandated local program.

(2) This bill would incorporate additional changes in Section 12071 of the Penal Code proposed by AB 1124, to be operative if AB 1124 and this bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 12035 of the Penal Code is amended to read:

12035. (a) As used in this section, the following definitions shall apply:

(1) “Locking device” means a device that is designed to prevent the firearm from functioning and when applied to the firearm, renders the firearm inoperable.

(2) “Loaded firearm” has the same meaning as set forth in subdivision (g) of Section 12031.

(3) “Child” means a person under 16 years of age.

(4) “Great bodily injury” has the same meaning as set forth in Section 12022.7.

(5) “Locked container” has the same meaning as set forth in subdivision (d) of Section 12026.2.

(b) (1) Except as provided in subdivision (c), a person commits the crime of “criminal storage of a firearm of the first degree” if he or she keeps any loaded firearm within any premise which is under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian and the child obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person.

(2) Except as provided in subdivision (c), a person commits the crime of “criminal storage of a firearm of the second degree” if he or she keeps any loaded firearm within any premise which is under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian and the child obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself, herself, or any other person, or carries the firearm either to a public place or in violation of Section 417.

(c) Subdivision (b) shall not apply whenever any of the following occurs:

(1) The child obtains the firearm as a result of an illegal entry to any premises by any person.

(2) The firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.



(3) The firearm is carried on the person or within such a close proximity thereto so that the individual can readily retrieve and use the firearm as if carried on the person.

(4) The firearm is locked with a locking device that has rendered the firearm inoperable.

(5) The person is a peace officer or a member of the armed forces or national guard and the child obtains the firearm during, or incidental to, the performance of the person's duties.

(6) The child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person, or persons.

(7) The person who keeps a loaded firearm on any premise which is under his or her custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premise.

(d) Criminal storage of a firearm is punishable as follows:

(1) Criminal storage of a firearm in the first degree, by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine not exceeding ten thousand dollars (\$10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Criminal storage of a firearm in the second degree, by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(e) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, the district attorney shall consider, among other factors, the impact of the injury or death on the person alleged to have violated this section when deciding whether to prosecute an alleged violation. It is the Legislature's intent that a parent or guardian of a child who is injured or who dies as the result of an accidental shooting shall be prosecuted only in those instances in which the parent or guardian behaved in a grossly negligent manner or where similarly egregious circumstances exist. This subdivision shall not otherwise restrict, in any manner, the factors that a district attorney may consider when deciding whether to prosecute alleged violations of this section.

(f) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, no arrest of the person for the alleged violation of this section shall occur until at least seven days after the date upon which the accidental shooting occurred.

In addition to the limitation contained in this subdivision, a law enforcement officer shall consider the health status of a child who suffers great bodily injury as the result of an accidental shooting prior to arresting a person for a violation of this section, if the person to be

arrested is the parent or guardian of the injured child. The intent of this subdivision is to encourage law enforcement officials to delay the arrest of a parent or guardian of a seriously injured child while the child remains on life-support equipment or is in a similarly critical medical condition.

(g) (1) The fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section shall be considered a mitigating factor by a district attorney when he or she is deciding whether to prosecute the alleged violation.

(2) In any action or trial commenced under this section, the fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section, shall be admissible.

(h) Every person licensed under Section 12071 shall post within the licensed premises the notice required by paragraph (7) of subdivision (b) of that section, disclosing the duty imposed by this section upon any person who keeps a loaded firearm.

SEC. 2. Section 12036 is added to the Penal Code, to read:

12036. (a) As used in this section, the following definitions shall apply:

(1) “Locking device” means a device that is designed to prevent the firearm from functioning and when applied to the firearm, renders the firearm inoperable.

(2) “Child” means a person under the age of 16 years.

(3) “Off-premises” means premises other than the premises where the firearm was stored.

(4) “Locked container” has the same meaning as set forth in subdivision (d) of Section 12026.2.

(b) A person who keeps a pistol, revolver, or other firearm capable of being concealed upon the person, loaded or unloaded, within any premise that is under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to that firearm without the permission of the child’s parent or legal guardian and the child obtains access to that firearm and thereafter carries that firearm off-premises, shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) A pistol, revolver, or other firearm capable of being concealed upon the person that a child gains access to and carries off-premises in violation of this section shall be deemed “used in the commission of any misdemeanor as provided in this code or any felony” for the purpose of subdivision (b) of Section 12028 regarding the authority to confiscate firearms and other deadly weapons as a nuisance.

(d) This section shall not apply if any one of the following circumstances exists:

(1) The child obtains the pistol, revolver, or other firearm capable of being concealed upon the person as a result of an illegal entry into any premises by any person.

(2) The pistol, revolver, or other firearm capable of being concealed upon the person is kept in a locked container or in a location that a reasonable person would believe to be secure.

(3) The pistol, revolver, or other firearm capable of being concealed upon the person is locked with a locking device that has rendered the firearm inoperable.

(4) The pistol, revolver, or other firearm capable of being concealed upon a person is carried on the person within such a close range that the individual can readily retrieve and use the firearm as if carried on the person.

(5) The person is a peace officer or a member of the armed forces or national guard and the child obtains the pistol, revolver, or other firearm capable of being concealed upon the person during, or incidental to, the performance of the person's duties.

(6) The child obtains, or obtains and discharges, the pistol, revolver, or other firearm capable of being concealed upon the person in a lawful act of self-defense or defense of another person or persons.

(7) The person who keeps a pistol, revolver, or other firearm capable of being concealed upon the person has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

(e) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, the district attorney shall consider, among other factors, the impact of the injury or death on the person alleged to have violated this section when deciding whether to prosecute the alleged violation. It is the Legislature's intent that a parent or guardian of a child who is injured or who dies as the result of an accidental shooting shall be prosecuted only in those instances in which the parent or guardian behaved in a grossly negligent manner or where similarly egregious circumstances exist. This subdivision shall not otherwise restrict, in any manner, the factors that a district attorney may consider when deciding whether to prosecute alleged violations of this section.

(f) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, no arrest of the person for the alleged violation of this section shall occur until at least seven days after the date upon which the accidental shooting occurred.

In addition to the limitation contained in this subdivision, a law enforcement officer shall consider the health status of a child who suffers great bodily injury as the result of an accidental shooting prior to arresting a person for a violation of this section, if the person to be

arrested is the parent or guardian of the injured child. The intent of this subdivision is to encourage law enforcement officials to delay the arrest of a parent or guardian of a seriously injured child while the child remains on life-support equipment or is in a similarly critical medical condition.

(g) (1) The fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section shall be considered a mitigating factor by a district attorney when he or she is deciding whether to prosecute the alleged violation.

(2) In any action or trial commenced under this section, the fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section, shall be admissible.

(h) Every person licensed under Section 12071 shall post within the licensed premises the notice required by paragraph (7) of subdivision (b) of that section, disclosing the duty imposed by this section upon any person who keeps a pistol, revolver, or other firearm capable of being concealed upon the person.

SEC. 3. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term “licensee,” “person licensed pursuant to Section 12071,” or “dealer” means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller’s permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller’s permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department’s records indicate that

the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face “Valid for Retail Sales of Firearms” and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant’s intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events

specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 15 days of the submission to the department of any correction to the application, or within 15 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. Prior to April 1, 1997, within 10 days of the application to purchase any firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. On or after April 1, 1997, within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or

12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(B) "IF YOU KEEP A LOADED FIREARM, OR A FIREARM CONCEALABLE UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 16 GAINS ACCESS TO THE FIREARM, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(C) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, “clear evidence of his or her identity and age” means either of the following:

(A) A valid California driver’s license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a “basic firearms safety certificate” means a basic firearms certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a “secure facility” means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee’s premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, “licensed premises,” “licensed place of business,” “licensee’s place of business,” or “licensee’s business premises” means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A “firearms transaction record” is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer’s business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars (\$85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department’s fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 3.5. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that

the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face “Valid for Retail Sales of Firearms” and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant’s intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events

specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

- (i) The building designated in the license.
- (ii) The places specified in subparagraph (B) or (C).
- (iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 15 days of the submission to the department of any correction to the application, or within 15 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. Prior to April 1, 1997, within 10 days of the application to purchase any firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. On or after April 1, 1997, within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or

12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(B) "IF YOU KEEP A LOADED FIREARM, OR A FIREARM CONCEALABLE UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 16 GAINS ACCESS TO THE FIREARM, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(C) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(9) (A) Commencing July 1, 1998, the licensee shall provide the purchaser or transferee of a firearm, or person being loaned a firearm, a trigger lock or similar device designed for that firearm. The trigger lock or similar device shall be designed to prevent the unintentional discharge of the firearm. The provisions of this subparagraph shall not apply to any purchaser, transferee, or other person being loaned a relic, curio, memorabilia, or display firearm.

(B) The licensee shall provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 which shall contain, among other things, a statement of the penalties for improper storage of a

firearm and statistics for firearms used in suicides and accidental shootings in this state. The licensee may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, “clear evidence of his or her identity and age” means either of the following:

(A) A valid California driver’s license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a “basic firearms safety certificate” means a basic firearms safety certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a “secure facility” means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee’s premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, “licensed premises,” “licensed place of business,” “licensee’s place of business,” or “licensee’s business premises” means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A “firearms transaction record” is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer’s business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars (\$85), to cover the reasonable

cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 1124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 12071 of the Penal Code, and (3) this bill is enacted after AB 1124, in which case Section 3 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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